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THAT ONE VIDEO ENTERTAINMENT, LLC, a
California limited liability company

UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

THAT ONE VIDEO
ENTERTAINMENT, LLC, a
California limited liability company,

Plaintiff,
vs.

KOIL CONTENT CREATION PTY
LTD., an Australian proprietary
limited company doing business as
NOPIXEL; MITCHELL CLOUT, an
individual; and DOES 1-25, inclusive,

Defendants.

CASE NO: 2:23-cv-02687 CAS (JCx)

[Assigned to the Hon. Stephen V. Wilson;
Ctrm 10A]

**DECLARATION OF DANIEL TRACEY
IN SUPPORT OF PLAINTIFF'S MOTION
FOR SUMMARY ADJUDICATION**

*[Motion; Declarations of Jacque Khalil,
William Francis, Benjamin Lau, Esq., and
John Begakis, Esq.; Separate Statement of
Undisputed Fact; and [Proposed] Order filed
concurrently herewith]*

Hearing

Date: September 9, 2024
Time: 1:30 p.m.
Dept.: Courtroom 10A (10th Floor)
350 W. First Street
Los Angeles, CA 90012
Judge: Hon. Stephen V. Wilson

Action Filed: April 10, 2023
Trial Date: September 17, 2024

DECLARATION OF DANIEL TRACEY

I, Daniel Tracey, declare and state as follows:

1. I am an individual currently residing in the County of Maricopa, State of Arizona, and am over 18 years of age. I hereby submit this Declaration in support of the Motion for Summary Adjudication (the “Motion”) filed by Plaintiff THAT ONE VIDEO ENTERTAINMENT, LLC, a California limited liability company (“Plaintiff”) against Defendants KOIL CONTENT CREATION PTY LTD., an Australian proprietary limited company doing business as NOPIXEL (“NoPixel”) and MITCHELL CLOUT, an individual (“Clout”) (collectively, “Defendants”). I know all of the following facts of my own personal knowledge and, if called upon and sworn as a witness, could and would competently testify thereto.

2. I am a software engineer and developer from the United Kingdom.

3. In or about early 2020, I joined the videogame server (the “NoPixel Server”) for the “open world” videogame “Grand Theft Auto V” (the “Game”) operated by Defendants KOIL CONTENT CREATION PTY LTD., an Australian proprietary limited company doing business as NOPIXEL (“NoPixel”) and MITCHELL CLOUT, an individual (“Clout”) (collectively, “Defendants”). When I joined the Server, I do not recall applying through NoPixel’s standard application process and accepting the “Terms and Rules” set forth on the NoPixel website located at <www.nopixel.net> (the “Website”).

4. After joining, I subsequently reached out to someone who worked for Defendant NoPixel to apply to become a developer for the NoPixel Server. I am aware that Defendant Clout claims that, before reaching out to anyone, I submitted an application that was apparently rejected. But I do not recall ever submitting any such application. When I joined, I was not asked to sign, nor did I sign, any separate written agreement regarding my services as a developer for the NoPixel Server.

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1 5. During my time as a developer, I contributed significantly to the
2 development of Version 3.0 of the NoPixel Server. In fact, my contributions were so
3 significant that on or about May 10, 2021, Defendant Clout offered to pay me to
4 continue to perform such services, in one of our communications on the messaging
5 application Discord. I was initially hesitant, but Defendant Clout insisted. So, a few
6 days later, I messaged Defendant Clout on Discord and asked him how much he
7 would pay me if I agreed to work for compensation. He offered to pay me \$10,000
8 per month. In a subsequent conversation on Discord, on or about May 27, 2021,
9 Defendant Clout also offered to execute a separate written agreement to memorialize
10 the terms of my work as an independent contractor for Defendant NoPixel, but I was
11 never presented with, nor did I ever sign, any such agreement.

12 6. On or about October 14, 2021, I entered into a written employment
13 agreement with Plaintiff THAT ONE VIDEO ENTERTAINMENT, LLC, a
14 California limited liability company (“Plaintiff”), pursuant to which I received a
15 salary of \$105,000 per year, plus bonuses, in exchange for my agreement to be
16 employed full-time as “Lead Developer” (the “Employment Agreement”). Pursuant
17 to my discussions with Plaintiff’s principal, Jacque Khalil, I understood that I could
18 be, and I in fact agreed to be, loaned out to third parties, like Defendant NoPixel, to
19 provide lead developer services. I also understood that I would be spending, and I
20 agreed to spend, a portion of my employment on the streaming platform Twitch
21 streaming myself rendering development services (i.e., coding) on the NoPixel
22 Server, and playing the Game.

23 7. When I entered into the Employment Agreement, Defendant Clout knew
24 that I was working as an employee for Plaintiff because I told him. Additionally, the
25 terms of my arrangement with Defendant NoPixel changed because Plaintiff started
26 invoicing Defendant NoPixel for my services, and at least a few of my monthly
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1 payments were paid directly to Plaintiff. I was also elevated to the position of lead
2 developer.

3 8. Because I was employed by Plaintiff, but I was not an American citizen,
4 Plaintiff agreed to sponsor my H-1B visa application (the “Application”). I am aware
5 that Plaintiff indicated in the Application that I would not be placed at any worksite
6 controlled by a third-party to whom my services would be loaned out, like Defendant
7 NoPixel. This was accurate because I worked remotely for Defendant NoPixel. I am
8 also aware that Plaintiff indicated in the Application that approximately ten percent
9 (10%) of my time working for Plaintiff would be dedicated to creating “video
10 tutorials demonstrating software modifying techniques and general media content
11 discussing software modifying strategies for interactive multimedia entertainment
12 productions.” This was accurate because I was streaming myself on Twitch coding on
13 the NoPixel Server and playing the Game, and at the time the Application was
14 submitted, I believed those duties would make up approximately 10% of my time.

15 9. During my time as lead developer for the NoPixel Server, my work and
16 responsibilities increased to include not only software development but also (i)
17 managing the work of other developers for the NoPixel Server, and (ii) handling
18 technical operations and infrastructure development related work on the Server, such
19 as developing code, fixing bugs, and generally ensuring that the Server ran properly.
20 In other words, I effectively ran the company. In rendering my own development
21 services on the Server, which work product Defendant NoPixel allowed me to store
22 on my own, password protected account maintained on Github, I also contributed
23 significantly to the development of various features of the “back end” information
24 management systems that allowed, and continue to allow, the NoPixel Server to
25 function, including: (i) user registration and age verification; (ii) login; (iii)
26 notification management; (iv) programmatic payment processing for various
27 monetization avenues; and (v) various security features. I’m aware that Defendants
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1 have retained an expert who has argued that my contributions to the Server were
2 insignificant, in part, because I did not actually contribute to the “creation” of certain
3 features of the NoPixel Server since the Server utilizes already-established third-
4 parties to provide those features. But that argument belies a lack of understanding of
5 how modern video game development works. Modern video games, like the Game,
6 rely on many external, third-party systems to function. But, in order for games like
7 the Game to use those systems, developers like myself must develop the code that
8 effectively connects the relevant game to such systems through application
9 programming interfaces (or “APIs”). Thus, my work as a developer connecting the
10 NoPixel Server to various APIs did mean that I substantially contributed to the
11 “creation” of various features of the NoPixel Server. In the case of my work
12 connecting the NoPixel Server to the third party payment processor called Tebex, for
13 example, I was able to develop a payment processing system within the Game that
14 opened up new ways for Defendant NoPixel to monetize aspects of the game, which
15 generated more revenue for Defendants.

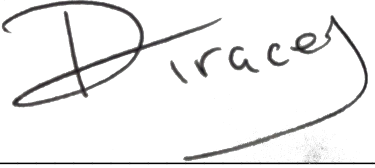
16 10. Because my contributions as lead developer for the NoPixel Server were
17 so significant, Defendant Clout orally agreed, over Discord, to make me his partner,
18 and to receive fifty percent (50%) of the profits derived from the NoPixel Server. But
19 we also agreed that most of those profits (i.e., all profits except for certain profits
20 derived from certain international servers) would be reinvested into the business.

21 11. In or about late 2022, Defendant Clout and I had a personal
22 disagreement, and, as a result of that disagreement, I was eventually terminated. I am
23 aware that Defendants now claim that I was terminated on or about December 27,
24 2022, but, at the time, neither Defendant Clout nor anyone else for Defendant
25 NoPixel informed me about my termination on that particular date.

26 12. Furthermore, Defendants have since accused me of causing a “data
27 breach” to the NoPixel Server after I was terminated. However, I have still never seen
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1 any evidence supporting this accusation, despite the negative effects such a serious
2 accusation could have on my career as a software developer.

3 I declare under penalty of perjury under the laws of the State of California that
4 the foregoing is true and correct, and that this Declaration was executed on August
5 12, 2024, at Phoenix, Arizona.

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8 DANIEL TRACEY
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CERTIFICATE OF SERVICE

I HEREBY CERTIFY that a copy of the foregoing electronically filed document has been served via a “Notice of Electronic Filing” automatically generated by the CM/ECF System and sent by e-mail to all attorneys in the case who are registered as CM/ECF users and have consented to electronic service pursuant to L.R. 5-3.3.

Dated: August 12, 2024

By: /s/ John Begakis
John M. Begakis